

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 313 Child Support  
**SPONSOR(S):** Daniels  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Roth	Brazzell
2) Ways & Means Committee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Child support is a parent's legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education. The obligation is enforceable both civilly and criminally.

Civil remedies include suspension of the driver license and motor vehicle registration of an individual who owes child support (the obligor), and an order for him or her to seek employment or job training. An example of a criminal remedy is that a court can hold the obligor in contempt for having the ability to pay support and subsequently failing to pay.

The bill amends s. 61.13106, F.S., to include additional ways for an obligor to respond to the notice provided by the Department of Revenue within 20 days to stop the suspension of his or her driver license by the Department of Highway Safety and Motor Vehicles. The additional responses by the obligor include demonstration that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.

The bill amends s. 61.14(5)(a), F.S., to require the court to find that an obligor is not in contempt for failure to pay child support if he or she demonstrates inability to pay child support due to:

- An act of God.
- A medical emergency involving him or her.
- Sudden involuntary unemployment beyond his or her control.

The bill requires the Department of Economic Opportunity (DEO) to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring. The bill requires DEO to adopt rules to implement such a program.

The bill appears to have an indeterminate, but likely, insignificant fiscal impact on state and local government. See fiscal comments.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Child Support

Child support is a parent's legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.<sup>1</sup> This obligation arises since each parent has a duty to support<sup>2</sup> his or her minor or legally dependent child.<sup>3</sup> Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average, 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.<sup>4</sup>

##### *Establishment of Child Support Obligation*

When parents live apart due to divorce or separation, the court may order a parent who owes a duty of support to a child, to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.<sup>5</sup> Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support to be provided based on each parents' income. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.<sup>6</sup> The judicial officer is also permitted to deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.<sup>7</sup>

##### *Department of Revenue Child Support Program*

The federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.<sup>8</sup> Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.<sup>9</sup> In Florida, the department administering the child support program is the Department of Revenue (DOR).<sup>10 11</sup> Child support payments may be handled through private attorneys; these payments separate from state child support programs.<sup>12</sup>

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<sup>1</sup> Black's Law Dictionary 100 (3<sup>rd</sup> pocket ed. 2006).

<sup>2</sup> S. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

<sup>3</sup> S. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.

<sup>4</sup> National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at <http://www.ncsl.org/research/human-services/child-support-homepage.aspx> (last viewed March 16, 2017).

<sup>5</sup> S. 61.13(1)(a), F.S.

<sup>6</sup> S. 61.30(1)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at <http://www.ncsl.org/research/human-services/child-support-administration.aspx> (last viewed March 17, 2017).

<sup>9</sup> *Id.*

<sup>10</sup> S. 409.2557(1), F.S.

<sup>11</sup> Department of Revenue, *About the Child Support Program*, 2016, available at [http://floridarevenue.com/dor/childsupport/about\\_us.html](http://floridarevenue.com/dor/childsupport/about_us.html) (last viewed March 17, 2017).

<sup>12</sup> *Supra*, at FN 8.

Child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.<sup>13</sup>

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.<sup>14</sup> IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- Public or Current Assistance Cases: Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to OCSE in order to attempt to collect child support directly from the noncustodial parent.
- Non-Public Assistance Cases: Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- Foster Care and Adoption Assistance (IV-E Cases): Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).<sup>15</sup>

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect outstanding, unpaid child support.<sup>16</sup>

During the 2015 fiscal year, approximately \$32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.<sup>17</sup> In fiscal year 2015, Florida had a total caseload of 650,421 cases and collected approximately \$1.4 billion in child support collections. However, the total amount of arrearages was approximately \$5.7 billion.<sup>18</sup> In fiscal year 2015-2016, Florida DOR IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.<sup>19</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at <http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5> (last viewed March 17, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> Florida Courts, *Uniform Data Reporting, Child Support FY2015-16, 2017*, available at <http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.shtml#Support> (last viewed March 17, 2017).

## Enforcement

As the state agency designated as the agency responsible for the administration of the child support enforcement program,<sup>20</sup> DOR has the authority to take actions necessary to ensure that children are maintained from the resources of their parents.<sup>21</sup> If a parent ordered to pay child support fails to pay, there are several options to enforce a support order, including both civil and criminal remedies. Civil remedies include garnishment of the obligor's<sup>22</sup> wages,<sup>23</sup> an order for income deduction,<sup>24</sup> suspension or denial of certain business and professional licenses and certificates,<sup>25</sup> suspension of the person's driver license and motor vehicle registration,<sup>26</sup> and an order to seek employment or job training.<sup>27</sup>

### *Driver License Suspension*

If an obligor is 15 days delinquent in making a support payment, DOR in Title IV-D cases, and the clerk of the court, in non-IV-D cases, will provide notice to the obligor of the delinquency.<sup>28</sup> The notice must state that DOR or the clerk of the court will request the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver license within 20 days after the date that the notice is mailed.<sup>29</sup> The notice<sup>30</sup> lists several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Entering into a written agreement for payment (with the obligee<sup>31</sup> or DOR);
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she is disabled and incapable of self-support;
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is making bankruptcy payments.<sup>32</sup>

In addition, the notice states that DOR will consider the obligor's current situation and ability to pay, and that if the obligor enters into a written agreement with DOR, DOR will not have the obligor's license suspended as long as the agreed-upon payments are made. The notice also states that an obligor may contest the notice if he or she does not have the ability to make payments.<sup>33</sup>

If an obligor's driver license is suspended, the obligor can choose to petition the court to direct DHSMV to issue a license for driving privileges restricted to business purposes only.<sup>34</sup> In Fiscal Year 2015-2016, DHSMV received 170,332 requests for driver license suspensions from DOR for failure to pay child support.<sup>35</sup>

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<sup>20</sup> S. 409.2557(1), F.S.

<sup>21</sup> S. 409.2557(2), F.S.

<sup>22</sup> S. 61.046, F.S. defines "obligor" as a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

<sup>23</sup> S. 61.12, F.S.

<sup>24</sup> S. 61.1301, F.S.

<sup>25</sup> S. 61.13015, F.S.

<sup>26</sup> S. 61.13016, F.S.

<sup>27</sup> S. 61.14(5)(b), F.S.

<sup>28</sup> S. 61.13016(1), F.S.

<sup>29</sup> S. 61.13016(1)(c), F.S.

<sup>30</sup> Email from Debbie Longman, Director of Office of Legislative and Cabinet Services, Department of Revenue, RE: Notice of Intent to Suspend Driver's License (March 11, 2017) on file with the Children, Families, and Seniors Subcommittee staff.

<sup>31</sup> S. 61.046, F.S. defines "obligee" as the person to whom payments are made pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

<sup>32</sup> S. 61.13016(1)(c)1., F.S.

<sup>33</sup> *Supra*, at FN 30.

<sup>34</sup> S. 61.13016(2), F.S. The term "a driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. Section 322.271(1)(c)1., F.S.

<sup>35</sup> Department of Highway Safety and Motor Vehicles, *2017 Agency Legislative Bill Analysis*, February 2017, p. 3 (on file with the Children, Families, and Seniors Subcommittee staff).

In Fiscal Year 2012-2103, approximately 65 percent of the licenses suspended for failure to pay child support were reinstated within one year of the suspension. DOR officials believe that the threat of losing a driver license is one of the best compliance tools it has to enforce child support orders. In Fiscal Year 2012-2103, DOR collected approximately \$101.8 million in delinquent child support payments from parents who received a notice of suspension or whose license was suspended.<sup>36</sup>

### *Contempt of Court*

The original order for the payment of support creates a presumption that the obligor has the ability to pay the support. A court may hold the obligor in contempt<sup>37</sup> for having the ability to pay support and subsequently failing to pay.<sup>38</sup> At the contempt hearing, the obligor has the burden of proof to show that he or she lacks the ability to purge<sup>39</sup> himself or herself from the contempt (pay what he or she is able to pay towards what he or she owes).<sup>40</sup> If the obligor is unemployed or underemployed, or has no income, but is able to work, the court may order the obligor to:

- Seek employment.
- File reports with the court or DOR, detailing the obligor's efforts to seek and obtain employment.
- Notify the court or DOR, upon obtaining employment, income, or property.
- Participate in job training, job placement, work experience, or other work programs that are available.<sup>41</sup>

If the obligor willfully fails to comply with a court order to seek work or participate in work-related activities, he or she may be held in contempt of court.<sup>42</sup> Once an obligor is held in contempt, the court may impose sanctions to obtain compliance with the order including incarceration, suit money and costs, compensatory or coercive fines, or attorneys' fees.<sup>43</sup>

### *Civil and Criminal Contempt Incarceration*

Civil and criminal contempt hearings for failure to pay support can both result in incarceration of an obligor, but their purposes are different:

[T]he purpose of a civil contempt proceeding is to obtain compliance on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor<sup>44</sup> has the ability to comply. This ability to comply is the contemnor's "key to his cell." The purpose of criminal contempt, on the other hand, is to punish. Criminal contempt proceedings are utilized to vindicate the authority of the court or to punish for an intentional violation of an order of the court.<sup>45</sup>

Incarceration for civil contempt may only be imposed if the court makes a finding that the obligor has the "ability to purge himself of contempt." The ability exists if the obligor is earning a paycheck or if he or she has other assets available to him or her that could be

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<sup>36</sup> Office of Program Policy Analysis and Government Accountability, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, February 2014, p. 8, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last viewed March 18, 2017).

<sup>37</sup> S. 38.23, F.S. "Contempt" is a refusal to obey an order of the court.

<sup>38</sup> S. 61.14(5)(a), F.S.

<sup>39</sup> The Department of Revenue defines "purge" as the ability to remedy a delinquent support payment.

<sup>40</sup> S. 61.14(5)(a), F.S.

<sup>41</sup> S. 61.14(5)(b), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Fla. Fam. L. R. P. 12.615(d)(2). "Once the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order." *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

<sup>44</sup> Black's Law Dictionary 140 (3<sup>rd</sup> pocket ed. 2006). A "contemnor" is a person who is guilty of contempt before a governmental body, such as a court or legislature.

<sup>45</sup> *Bowen v. Bowen*, 471 So. 2d 1274, 1277 (Fla. 1985).

used to pay the support.<sup>46</sup> In calendar year 2016, there were 511 arrests for non-payment of child support; this is a reduction of 77 arrests from calendar year 2015.<sup>47</sup>

### *Work Release*

Work release allows certain inmates to work at paid employment in the community during confinement. They must return to the custody of the Department of Corrections or the county facility at the end of each work period.<sup>48</sup> The inmate is required to set up a plan for the disbursement of his or her earnings, and such plan must include a provision that no less than 10 percent of net income will go toward the support of any dependents the inmate may have.<sup>49</sup>

Additionally, under county programs, wages or salary earned may be distributed by the sheriff for support pursuant to a court order.<sup>50</sup>

### *Home Confinement*

Home confinement, or community control, is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays.<sup>51</sup> It is an individualized program where the offender's freedom is restricted within the community, home, or noninstitutionalized residential placement. The court determines the specific sanctions, such as electronic monitoring, imposed on the offender. Home confinement allows an offender to work while serving his or her sentence.<sup>52</sup>

### Tax Credits

The Florida Constitution permits the state to levy a tax pursuant to law, and the local governments to levy ad valorem taxes and any other tax that is provided by law.<sup>53</sup> The Legislature has enacted numerous taxes and fees and has granted the local governments authority to raise revenues for specific purposes. The Legislature has also enacted numerous laws that provide for exemptions and credits to the revenue sources.<sup>54</sup>

DOR is responsible for tax collection as well as enforcement and audits related to such taxes collected.<sup>55</sup> Some tax credits are administered by DOR, while others are administered by another agency. For example, the Department of Economic Opportunity (DEO) administers the rural job tax credit. The statute for the rural job tax credit sets forth specific criteria, such as eligible applicants and tax credit award amounts.<sup>56</sup> DEO accepts applications for the tax credit, reviews the application to determine if it meets the requirements and criteria for the tax credit, and then notifies DOR of approved applicants. DOR ensures that anyone claiming the credit on a tax return is eligible to take the credit. There is currently no tax credit for businesses employing child support obligors.

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<sup>46</sup> The court is "not limited to the amount of cash immediately available to the contemnor; rather, the court may look to all assets from which the amount might be obtained." *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

<sup>47</sup> Florida Department of Law Enforcement, *Child Support Statistics*, 2017 (on file with the Children, Families, and Seniors Subcommittee staff).

<sup>48</sup> S. 945.091(1)(b) and 951.24, F.S. See Department of Corrections, *Frequently Asked Questions Regarding Work Release*, available at <http://www.dc.state.fl.us/oth/inmates/wr.html> (last visited March 14, 2017).

<sup>49</sup> Rule 33-601.602 (11)(c) and (j), F.A.C.

<sup>50</sup> S. 951.24(3)(a), F.S.

<sup>51</sup> S. 948.001(3), F.S.

<sup>52</sup> *Id.* SS. 948.01 and 948.11, F.S.

<sup>53</sup> Article VII, s. 1, Fla. Const.

<sup>54</sup> *Id.*

<sup>55</sup> S. 20.21(2)(c) and (d), F.S.

<sup>56</sup> S. 212.098, F.S.

## Effect of Proposed Changes

The bill amends s. 61.13106, F.S., to include additional ways for an obligor to respond to the notice provided by DOR within 20 days to stop the suspension of his or her driver license by DHSMV. The additional responses by the obligor include demonstration that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.

The additional responses provide obligor parents new options for demonstrating an inability to pay the child support owed. However, the responses may also limit the obligor from demonstrating an inability to pay that does not fall under one of the added purviews. Additionally, some of the terms used, such as “act of God” and “medical emergency” are vague.

The bill amends s. 61.14(5)(a), F.S., to require the court to find that an obligor is not in contempt for failure to pay child support if he or she demonstrates inability to pay child support due to:

- An act of God.
- A medical emergency involving him or her.
- Sudden involuntary unemployment beyond his or her control.

Additionally, the bill allows the court to order an obligor, whom the court finds demonstrated one of the above circumstances, to be placed in a work-release program or under supervised home confinement without electronic monitoring.

This bill may benefit the obligor parent, who may demonstrate one of the above circumstances, by keeping him or her from being placed in contempt. However, the bill requires the court to deny the contempt and allows it to order the obligor to be placed in a work-release program or under supervised home confinement if the obligor demonstrates one of the above circumstances. This is problematic for the court and for the obligor, and is discussed in “Constitutional Issues” below.

The bill requires DEO to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring. The bill requires DEO to adopt rules to implement such a program.

A tax credit to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring, would likely encourage businesses to employ obligors. Obligor, as well as their children, will benefit from the employment. However, the bill does not specify the amount of tax credits allowed or the taxes against which a credit is allowed. See “Drafting Comments”, below.

## B. SECTION DIRECTORY:

**Section 1:** Creates the “Florida Responsible Parent Act.”

**Section 2:** Amends s. 61.13016, F.S., relating to suspension of driver license and motor vehicle registrations.

**Section 3:** Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreements or orders.

**Section 4:** Provides an effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

DHSMV may see a decrease in the number of nonrefundable service fee payments it receives from obligor parents when they apply for the return of their suspended license if more obligors respond to the driver license suspension notice, demonstrate one of the circumstances provided for in the bill, and avoid a driver license suspension. The required service fee payment is \$60.

#### **2. Expenditures:**

DOR indicates that the bill will have an insignificant fiscal impact on state government expenditures; however, DOR and the court system may see an increase in filings by obligors in response to the notice of driver license suspension. DEO's fiscal impact to develop and administer the tax credit program is indeterminate.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill facilitates a process for individuals who have an inability to pay a child support delinquency and helps them avoid suspension of their driver licenses. The bill will also help them avoid payment of a \$60 fee to reinstate those licenses.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill lacks detail regarding the tax credit program that it directs DEO to develop and administer. DEO would be unable to administer the program as the bill is drafted. Once the bill was amended to include this detail, a mandates analysis could be performed in regard to this element of the bill.

Other elements of the bill do not appear to affect county or municipal governments.

#### **2. Other:**

Under current law, a court may order an obligor to be incarcerated after being found in contempt for failure to pay support. However, the bill appears to allow a court to order an obligor to be incarcerated



after being found *not* in contempt for failure to pay support for specified reasons. Allowing a court to order incarceration (even if it is work release or supervised home confinement without electronic monitoring) without a finding of contempt or violation of criminal law may violate the obligor's right not to be imprisoned for a debt under Art. I, s. 11 of the Florida Constitution and due process rights under the U.S. Constitution.

**B. RULE-MAKING AUTHORITY:**

The bill provides that DEO has rulemaking authority to implement its provisions.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The term “act of God” is not defined and may be subject to varying interpretations. The bill also lacks the detail needed for DEO to develop a program to administer tax credits for businesses employing child support obligors.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**